

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H504689

BRENDA HORN, EMPLOYEE

CLAIMANT

BIRCH TREE COMMUNITIES, INC.,  
EMPLOYER

RESPONDENT

ATA WC SI TRUST/RISK  
MANAGEMENT RESOURCES, INC.,  
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MARCH 10, 2026

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK, in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 10, 2025, the above-captioned claim came on for a hearing in Little Rock, Arkansas. Previously, a pre-hearing telephone conference was held in this matter on October 15, 2025. A Pre-hearing Order was entered that same day pursuant to the telephone conference. Said order was admitted into evidence along with the parties' pre-hearing information filings without objection and marked Commission's Exhibit 1.

Stipulations

During the pre-hearing telephone conference, and/or at the hearing, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. That the employee-employer-insurance carrier relationship existed among the parties at all relevant times, including on or about July 21, 2025.
3. That the Claimant earned an average weekly wage of \$646.00, which would entitle her to a weekly temporary total disability rate of \$431.00, and a permanent partial disability rate of \$323.00 per week.
4. The Respondents initially accepted the case as a compensable claim and paid some appropriate medical benefits.
5. The Respondents have now controverted the claim in its entirety.
6. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

### Issues

By agreement of the parties, the issues to be litigated at the hearing are as follows:

1. Compensability of the Claimant's injuries sustained on July 21, 2025, to her right upper extremity and both knees.
2. Reasonable and necessary medical treatment for her alleged injuries.
3. Whether the claimant is entitled to temporary total disability compensation from the day after her injury and continuing through until December 15, 2025.
4. Whether the Claimant's attorney is entitled to a controverted attorney's fee.

### Contentions

The Claimant's and Respondents' contentions are set out in their respective response to the Pre-hearing Questionnaire. Said contentions are as follows:

#### Claimant:

The Claimant contends that she sustained compensable injuries to her right upper extremities and both knees on or about July 21, 2025. The Respondents have controverted the claim in its entirety. The Claimant contends that she is entitled to reasonable and necessary treatment for her injuries and mileage reimbursement for same. The Claimant

also contends that she is entitled to temporary total disability benefits from the date of injury through a date yet to be determined.

The Claimant's attorney is entitled to attorney's fees on all controverted indemnity benefits. All other issues are reserved.

Respondents:

The Respondents contend that the Claimant did not suffer a compensable injury on July 21, 2025. She was not in the course and scope of her employment when she fell on that date.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including the medical reports, the documentary evidence, and other matters properly before the Commission, and after having had an opportunity to listen to the testimony of the witnesses and having observed their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The proposed stipulations set forth above are reasonable and hereby accepted.
3. The Claimant was not performing employment services at the time of her accidental fall on July 21, 2025. All other issues have been rendered moot.
4. This claim is hereby respectfully denied and dismissed in its entirety.

Summary of Evidence

The witnesses were the Claimant, Ms. Brenda Horn, and Ms. April D. Eymer, the supervisor of housekeeping.

The record consists of the transcript from the Full Hearing held December 10, 2025, and the exhibits held therein. In addition to the Pre-hearing Order discussed above, the exhibits admitted into evidence in this case were: Claimant's Exhibit 1, which comprises the Claimant's

Medical Exhibit Index consisting of thirty-seven numbered pages of her medical records; Claimant's Exhibit 2, is the Claimant's Non-Medical Exhibit; Respondents' Exhibit 1 encompasses the Respondents' Hearing Exhibit Index entailing four numbered pages; and Respondents' Exhibit 2 is the Oral Deposition of the Claimant taken on September 26, 2025, and it is retained in the Commission's file. Additionally, the parties filed Post-Hearing Briefs. These have been blue backed and made a part of the record and were marked as Commission's Exhibit 2.

### Hearing Testimony

#### Claimant/Brenda Horn

The Claimant testified that she had worked as a housekeeping technician for the respondent-employer/Birch Tree Communities for three months. According to the Claimant, her supervisor was April Eymer. Her employment duties include responsibilities of general housekeeping, cleaning, mopping, vacuuming, dusting, and emptying the trash. She confirmed that she also cleaned the dishes left from lunch and breakfast. The Claimant also inspected facility for general cleanliness. She agreed that she monitored and reported health and safety issues to her supervisor. The Claimant stated that she coordinated, communicated, and submitted cleaning supply requests as needed to her supervisor and staff. Her other employment duties encompassed ensuring that all housekeeping and cleaning supplies were stored in the proper place.

Per the Claimant, her employer required her regular and punctual attendance. The Claimant agreed that her work required that she work in a constant state of alertness and in a safe manner. According to the Claimant, she also performed any other related duties as assigned. The Claimant confirmed that on July 21, 2025, she suffered an injury while on the job. She testified that her injury occurred as she was walking down the concrete steps. According to the Claimant,

she made it almost to the bottom step when she completely lost her balance and fell forward. The Claimant essentially testified that both of her knees were scraped and her right elbow was causing her a lot of pain, as well as her right kneecap. Her fall occurred around 1:45 p.m. Per the Claimant, normally she clocked in a few minutes. Her normal working hours were from 8:00 a.m. until 4:00 p.m.

The Claimant testified that she was going down the stairs to “snatch her mail from her car.” She admitted that she was getting some of her own personal mail. She confirmed that in her deposition testimony, she testified that she had her keys with her. These keys belonged to the building that would allow her to lock and unlock the doors so she could enter and exit the building. She confirmed that she also had her cell phone with her. According to the Claimant, her phone allowed her to communicate with the people at Birch Tree whenever they needed her to perform certain tasks. She testified that, for instance, one day an employee named Destiny called her to let her know she needed for her to go up to one of the apartments to deal with a problem with a washer that was full of water and not draining properly. The Claimant further testified that she responded if it was something that needed to be done right away. She would tend to the problem and return to what she was doing.

Regarding her breaks, the Claimant testified that she was never told how long her breaks were or what time to take them. However, the Claimant essentially testified that there was an understanding that she was authorized to take a ten to fifteen-minute break twice during her shift, and a twenty-minute break for dinner. She confirmed that she testified in her deposition that she normally takes a morning and a noon break. The Claimant testified that she lets her supervisor know whenever she takes a break. She confirmed that she does not clock out when taking a break. However, the Claimant admitted that she testified during her deposition, she was not sure if her

supervisor clocked her out. The Claimant admitted that if there was a spill on the floor or a sink to unclog, she was expected to take care of it.

The Claimant testified that she went to the nurse's station and reported to him what had happened. At that point, the nurse phoned April, her supervisor, to let her know what had happened. According to the Claimant, April notified another person in management by the name of Emma, who gave her paperwork to fill out. The nurse cleaned up her elbow and put bandages on it. She testified that April joined her at the nurse's station to check on her and then they went to Brenda's office. The Claimant confirmed that her supervisor asked if she wanted to go to the ER, but she refused and wanted to wait and see if the pain subsided.

The next morning the Claimant went to Saline Memorial for treatment of her injuries. She also treated with her primary care physician/PCP. The Claimant confirmed that she treated with an orthopedic specialist, Dr. Walsh. Her elbow was treated initially with a cast, but Dr. Walsh redid the cast. The Claimant confirmed that her elbow healed on its own in about six weeks. She confirmed that she was placed on sedentary work restrictions by Concentra, CMC in Little Rock, at the southwest facility. The Claimant agreed that she presented her restrictions to Birch Tree, but they told her they did not have any light duty work available. She confirmed that she has not been back to work since her injury.

Since this time, Dr. Walsh has performed surgery on her right knee. She had a visit with him on December 4, 2025. The Claimant confirmed that Dr. Walsh released her to return to full duty work as of December 15, 2025. She testified that she spoke with Amanda Mays at Birch Tree about returning to work. The Claimant confirmed that she plans to return to work at Birch Tree.

On cross-examination, the Claimant admitted that Respondents took her deposition on September 26, 2025. The Claimant testified that her first duties of the day included preparing the

coffee area with enough cups, creamers, and sugars for members as they went through the breakfast line with their trays. She testified that this process took about thirty to forty minutes. Then, she immediately starts running the hot water for the dishes. Next, the Claimant is required to sweep the main hallway and clean all the bathrooms if she has enough time in between to perform these duties. After this, the Claimant normally takes her last break around 2:00 p.m., give or take a few minutes before or after that time. Her lunch breaks were between 12:00 p.m. and 12:30. The Claimant testified that she would routinely stay on campus during that time frame. She further testified that she would always tell her supervisor when she was going on break. According to the Claimant, there have been times when she would go to Sonic and get them all (to include her supervisor, the cook, the office worker, and herself) a large, iced drink.

The Claimant confirmed that each morning when leaving her home, she always stops in her driveway to get her mail. She testified that she puts her mail in the sun visor of her car, and on her break, she goes to her car to get her mail so that she can look through it to see if there is anything she might need to tend to in Benton on her way home, which is in Tull. According to the Claimant, sometimes an electric bill will need to be paid, or she might have to go by the bank before leaving the Benton area.

Under further questioning, the following exchange took place:

Q. In the deposition you told me that all you had with you was your keys; is that right?

A. Keys and my cell phone and that's it.

Q. Well I don't remember you askin' me but yes, I always carry my cell phone because April would call, Destiny would call. A lot of calls I had to just not answer because it would not be pertaining to work.

The Claimant confirmed that on the day of her accidental fall, she did not receive a call while she was on her break. She specifically agreed that no one called her to clean a spill or fix a

clog. The Claimant confirmed that she testified that the only reason she was going to her car was to get her personal mail. She confirmed that her right arm has now healed and she has no pain in it. The Claimant admitted that when she was asked during her deposition testimony whether she was doing any job duties when she fell, her response was, “No.”

April Eymer

Ms. Eymer was called to testify as a witness on behalf of the Claimant. She testified that she works for Birch Tree Communities. Ms. Eymer has worked there for over four years. Her current job title is Housekeeping Supervisor. Ms. Eymer confirmed that she was employed in that role on July 21, 2025. She confirmed that she is familiar with the Claimant and aware of her fall on July 21. Ms. Eymer confirmed that the Claimant’s testimony about letting her know whenever she went on a break is correct. She confirmed that typically the Claimant did not have to clock out for breaks.

She testified that the Claimant told her the day of her fall she was going out to her car. Ms. Eymer testified that Birch Tree does not allow breaks. However, she testified that this was something she did just to accommodate the Claimant. Ms. Eymer confirmed the Claimant’s testimony wherein she testified that if there was an overflowing commode, she would have called the Claimant and expected her to come back in and take care of the issue.

With further questioning, Ms. Eymer also confirmed that she routinely communicated with the Claimant via her personal cell phone throughout the day about work matters. Ms. Eymer verified that the Claimant is a good employee. She also confirmed that she would welcome the Claimant back to work with open arms assuming she is released to work on December 15, 2025.

On cross-examination, the Ms. Eymer confirmed that on the day of the Claimant’s fall, she stopped by her office and informed her that she was going to her car. She admitted that on the day

of the Claimant fall, she had no reason to call the Claimant at the time that she was heading out to her car.

### Adjudication

#### Employment Services

The crucial issue for determination in this matter is whether the Claimant was performing employment services at the time of her accidental injury of July 21, 2025.

The test for determining whether an employee was acting within the "course of employment" at the time of the injury requires that the injury occur within the time and space boundaries of the employment, when the employee is carrying out the employer's purpose or advancing the employer's interests directly or indirectly. *Pilgrims Pride Corp. v Calderera*, 54 Ark. App. 92, 923 S.W.2d 290 (1996).

More specifically, an employee is performing employment services when she is doing something that is generally required by her employer. *Texarkana School District v. Conner*, 373 Ark. 372, 284 S.W. 3d 57 (2008). The test is whether the injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer's interest, either directly or indirectly. *Javen v. Economy Inn & Suites*, 370 Ark. 414, 260 S.W. 3d 281 (2007).

The facts in this case are clear and concise. On July 21, 2025, the Claimant worked for Birch Tree performing general housekeeping duties. Her working hours were from 8:00 a.m. until 4:00 p.m. The Claimant was permitted to take two breaks and a lunch break during her normal working hours. Both the Claimant and Ms. Eymer testified that the Claimant did not have to clock out during any of her break periods. Although it was mandatory that the Claimant had to abandon her break if the need arose for her to address a work-related problem such as a spill on the floor or

something of that nature. The evidence proves that the Claimant had to notify her supervisor before going on break.

It is undisputed that on July 21, the Claimant stopped by Ms. Eymer's office around 1:45 p.m. to let her know she was going down to her car. Shortly, thereafter, the nurse phoned Ms. Eymer to let her know that the Claimant had fallen and injured herself. The evidence shows as previously described above that the Claimant slipped on the stairs and fell forward, injuring her knees and right elbow.

At the time of the Claimant's injury on July 21, she was walking down the stairs to exit the building to go to her car to retrieve personal mail from it. Specifically, the Claimant credibly testified that when she fell down the stairs, she was headed to her vehicle to retrieve her own personal mail so she could look over it to see if she needed to address any personal business after work on her way home. At the time of her injury, the Claimant was not doing something that was required by her employer. Although the Claimant had not clocked out for her break, when her injury occurred, she was not carrying out or advancing her employer's interest either directly or indirectly.

Instead, at the point that the Claimant slipped and fell down the stairs, she was clearly not engaged in any employment activities involving her employer. Here, the Claimant was directly advancing and carrying out her own interest in that she was trying to get her mail from her car so that she could tend to her own personal affairs.

Accordingly, based on the evidence before me, I find that the evidence preponderates that the Claimant was not performing employment services at the time of her injury on July 21, 2025. All other remaining issues have been rendered moot and not discussed in this Opinion.

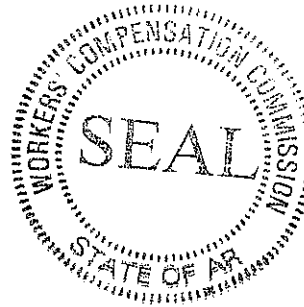
This claim is respectfully denied and dismissed in its entirety.

**ORDER**

The Claimant was not performing employment services at the time of her accidental injury, which occurred on July 21, 2025. All remaining issues have been rendered moot and not addressed in this Opinion.

This claim must be respectfully denied and dismissed in its entirety.

**IT IS SO ORDERED.**



*Chandra L. Black*  
**CHANDRA L. BLACK**  
**Administrative Law Judge**